

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

M.D., by her next friend, Sarah R. Stukenberg, §  
D.I., by his next friend, Nancy G. Pofahl, §  
Z.H., by his next friend, Carla B. Morrison, §  
S.A., by her next friend, Javier E. Solis, §  
A.M., by her next friend, Jennifer Talley, §  
J.S., H.V., and P.O., by their next friend, §  
Anna J. Ricker, K.E., by her next friend, §  
John W. Cliff, Jr., S.T., M.R., and J.R., §  
by their next friend, Bobbie M. Young, and §  
T.H., by his next friend Anita O'Rourke, §  
individually and on behalf of all others §  
similarly situated, §

Plaintiffs, §

vs. §

RICK PERRY, in his official capacity as §  
Governor of the State of Texas, KYLE §  
JANEK, in his official capacity as Executive §  
Commissioner of the Health and Human §  
Services Commission of the State of Texas, §  
and JOHN J. SPECIA, JR., in his official §  
capacity as Commissioner of the §  
Department of Family and Protective §  
Services of the State of Texas, §

Defendants. §

CIVIL ACTION NO. 2:11 CV-00084

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE CLAIMS OF  
PLAINTIFFS D.I., S.R., M.R., AND J.R.**

TO: Plaintiffs, by and through their attorneys of record, David Dodds, Barry F. McNeil, R. Thaddeus Behrens, Amelia J. Cardenas, HAYNES AND BOONE, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219; Marcia Robinson Lowry, Philip G. Barber, Stephen A. Dixon, Oliver Sohmer, Jessica Polansky, Patrick Almonrode, CHILDREN'S RIGHTS, 330 Seventh Avenue, Fourth Floor, New York, New York 10001; J.A. "Tony" Canales, Hector Canales, Patricia Bell, CANALES & SIMONSON, P.C., 2601 Morgan Avenue, Corpus Christi, Texas 78467-5624; R. Paul Yetter, Dori K. Goldman, Christopher D. Porter, YETTER COLEMAN LLP, 909 Fannin, Suite 3600, Houston, Texas 77010.

Prior to the Court's ruling on Plaintiffs' Motion for Class Certification [Docket No. 160-1], Defendants move for partial summary judgment denying all claims of Plaintiffs D.I., S.R., J.R., and M.R.

**Facts:**<sup>1</sup> On October 24, 2012, D.I. was adopted and is no longer in Permanent Managing Conservatorship (PMC) or otherwise in custody of the State of Texas. Since February 7, 2013, S.R., J.R., and M.R. likewise are no longer in PMC or otherwise in custody of the State of Texas.

**Grounds:** These undisputed facts render moot the claims of these four plaintiffs, which claims should be denied for lack of subject matter jurisdiction. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990). Further, none of these four individuals now have a personal stake in the outcome of the case when the Court rules on the Motion for Class Certification and thus they are precluded from serving as class representatives. *East Texas Motor Freight System v. Rodriguez*, 431 U.S. 395, 403 (1977); *Grant ex rel Family Eldercare v. Gilbert*, 324 F.3d 383 (5<sup>th</sup> Cir. 2003). And, finally, as S.R., J.R., and M.R. were the sole, proffered representatives for the Unverified Kinship Class, that claim must be dismissed as well. *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1046 (5<sup>th</sup> Cir. 1981)("In short, a lawsuit brought as a class action must present justiciable claims at each stage of the litigation; if the named plaintiffs' individual claims become moot before a class has been certified, no justiciable claims are at that point before the court and the case must as a general rule be dismissed for mootness.")

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

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<sup>1</sup> These facts are established by the Affidavit of Wyndi McPeters, Exhibit A hereto.

DANIEL T. HODGE  
First Assistant Attorney General

DAVID C. MATTAX  
Director of Defense Litigation

JAMES "BEAU" ECCLES  
Attorney-in-Charge  
Chief - General Litigation Division  
Texas Bar No. 00793668  
Southern District No. 310917

/s/ Thomas A. Albright  
THOMAS A. ALBRIGHT  
Texas Bar No. 00974790  
Southern District No. 107013

MARC RIETVELT  
Texas Bar No. 24048399  
Southern District No. 910979

ANDREW B. STEPHENS  
Texas Bar No. 24079396  
Southern District No. 1385273

Assistant Attorneys General  
Office of the Attorney General  
General Litigation Division - 019  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2120  
(512) 320-0667 FAX

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been sent by electronic case management filing on April 15, 2013 to:

David Dodds  
Haynes and Boone, LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219

J.A. "Tony" Canales  
Hector Canales  
Patricia C. Bell  
CANALES & SIMONSON, P.C.  
2601 Morgan Avenue  
Corpus Christi, Texas 78467-5624

R. Paul Yetter  
Dori K. Goldman  
Christopher D. Porter  
April L. Farris  
YETTER COLEMAN LLP  
909 Fannin, Suite 3600  
Houston, Texas 77010

Philip G. Barber  
CHILDREN'S RIGHTS  
330 Seventh Avenue, Fourth Floor  
New York, New York 10001

Barry F. McNeil  
R. Thaddeus Behrens  
Amelia J. Cardenas  
HAYNES AND BOONE, LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219

Marcia Robinson Lowry  
Stephen A. Dixon  
Oliver Sohmer  
Jessica Polansky  
Patrick Almonrode  
CHILDREN'S RIGHTS  
330 Seventh Avenue, Fourth Floor  
New York, New York 10001

/s/ Thomas A. Albright  
Thomas A. Albright